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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD JAE,

Plaintiff

v.

SUPERINTENDENT DRAGOVICH,
et al.

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No. 1: CV-00-2123

(Judge Rambo)

(Magistrate Judge Smyser)

FILED
HARRISBURG

AUG 29 2001

MARY E. D'ANDREA,
Per. 910
DEPUTY CLERK

**DEFENDANTS' MOTION FOR LEAVE TO FILE
MEMORANDUM OPPOSING PETITION FOR
WRIT OF MANDAMUS TWO DAYS OUT OF TIME**

Pursuant to Fed.R.Civ.P. 6(b) defendants respectfully request leave to file their brief opposing plaintiff's petition for a writ of mandamus two days out of time. In support of their motion defendants state as follows:

1. This is a civil rights action by a prisoner incarcerated in a state correctional institution.
2. Plaintiff is John Richard Jae, who is incarcerated at the State Correctional Institution at Greene.
3. The complaint asserts constitutional violations in connection with the conditions of his prior confinement at the State Correctional Institution at Camp Hill.
4. The Superintendent and several Corrections Officers employed at

SCI-Camp Hill are named as defendants.

5. On July 11, 2001 Magistrate Judge Smyser recommended that this action be dismissed without prejudice in light of plaintiff's failure to exhaust his administrative remedies.

6. Subsequently, plaintiff filed a petition for a writ of mandamus and a motion for an enlargement of time to file objections to the Magistrate Judge's report and recommendation.

7. Defendants sought and received an enlargement of time to respond to the petition for a writ of mandamus until August 27.

8. Defendants' counsel was unable to complete the brief in time to file on August 27, due to the demands of his other cases coupled and personal and family obligations. Specifically, on August 27 counsel was required to respond to a motion to compel that plaintiff filed in *Jae v. Kyler*, C. A. No. 1:CV-00-0315. On August 28, counsel had a medical appointment and was required to leave work early to pickup a child from school.

9. The brief has now been completed and filed.


10. The short delay in filing will not prejudice plaintiff nor will it substantially delay the final disposition of this matter.

WHEREFORE, defendants respectfully request the Court to grant

defendants leave to file their memorandum in opposition to plaintiff's petition for a writ of mandamus two days out-of-time.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

BY: 
MICHAEL L. HARVEY
Senior Deputy Attorney General

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DATE: August 29, 2001

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CERTIFICATE OF SERVICE

AND NOW, this 29th day of August, 2001, I, MICHAEL L. HARVEY,
Senior Deputy Attorney General, counsel for defendants in the above-captioned
action, hereby certify that I this day served the foregoing document by causing a
copy of the same to be deposited in the United States mail, postage prepaid, at
Harrisburg, Pennsylvania, addressed to the following:

John Richard Jae, BQ-3219
SCI-Greene
175 Progress Drive
Waynesburg, PA 15370-2902



MICHAEL L. HARVEY
Senior Deputy Attorney General

DATE: August 29, 2001